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June 7, 2004

Via Electronic Filing
Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A-325
Washington, DC 20554

Re: *BellSouth 272 Audit, EB Docket No. 03-197; Qwest 272 Audit, EB Docket No. 03-198; SBC 272 Audit, EB Docket No. 03-199; Verizon 272 Audit, EB Docket No. 03-200; Accounting Safeguards Order*, *CC Docket No. 96-150; Non-Accounting Safeguards Order*, *CC Docket No. 96-149; Special Access Proceeding, 01-321; Non-Dominance FNPRM, WC Docket No. 02-112*

Dear Ms. Dortch:

I am writing to respond to the BellSouth, Verizon and Qwest *ex partes* proposing further dilution of the already weak performance metrics for special and switched access services. The BellSouth *ex partes*[1] propose "that the Commission adopt a single set of 'harmonized' performance metrics." Key metrics would be eliminated and those kept would be weakened. The Qwest *ex parte*[2] proposes non-uniform "individual RBOC standards" with

1 The *ex parte* letter from Kathleen B. Levitz, BellSouth, to Marlene Dortch, FCC, WC Docket Nos. 96-149, 01-321, 02-112 and 03-197 (April 29, 2004); the three *ex parte* letters from Mary L. Henze, BellSouth, to Marlene Dortch, FCC, WC Docket Nos. 96-149, 01-321, 02-112 and 03-197 (May 5, 2004); and the two *ex parte* letters from Mary L. Henze, BellSouth, to Marlene Dortch, FCC, WC Docket Nos. 96-149, 01-321, 02-112 and 03-197 (May 11, 2004). The *ex partes* are each comprised of a cover letter and the same 15 page power point document ("*BellSouth ex parte power point*") and 12 page BellSouth Service Quality Measurement Plan (SQM) ("*BellSouth* ex *parte proposed metrics*").

2 *Ex parte* letter from Cronan O'Connell, Qwest, to Marlene Dortch, FCC, CC Docket Nos. 96-149, 01-321, WC Docket No. 02-112 and EB Docket No. 03-197 (May 20, 2004) at 2. The *ex parte* is comprised of a cover letter, a 6 page power point document

Qwest's using existing section 272 metrics which "are substantially the same as those proposed by BellSouth." Verizon's *ex parte*[3] proposes that if performance metrics are required at all, they should be limited to three BOC-by-BOC defined metrics – Firm Order Confirmation Timeliness, On Time Performance, and Mean Time to Restore – for special access services only, with the results self-reported by the BOC either annually or biennially. Any of these proposals, if adopted, would so eviscerate the Commission's ability to monitor BOC compliance with section 272(e)(1)[4] as to render that section, which survives section 272 sunset,[5] a nullity. The BOC proposed metrics should accordingly be rejected.

AT&T has, in its Comments on all the section 272 audits conducted to date, proposed that the Commission adopt uniform performance metrics for the section 272 audits based on the Joint Competitive Industry Group (JCIG) Proposal Regarding Performance Metrics and Installation Intervals for Interstate Special Access Services.[6] For the reasons more fully set forth in JCIG's filings in the *Special Access Proceedings* (demonstrating that the benchmark metrics proposed therein are better than the parity metrics advocated by the BOCs to detect discrimination),[7] AT&T urges the Commission to adopt the JCIG standards for the Section 272 audits.

("*Qwest ex parte power point*"), a 13 page Qwest Service Performance Measurement Description (SPMD) ("*Qwest* 272 *metrics*"), a 5 page description of statistical methodology and Performance Results from Nov. 2003 through April 2004.

3 *Ex parte* letter from Tyrone Keys, Verizon, to Marlene Dortch, FCC, WC Docket Nos. 02-112 and 01-321 (May 17, 2004) ("*Verizon May 17, 2004 ex parte*") at 7.

4 Section 272(e)(1) requires the BOC to "fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access service within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates."

5 First Report and Order and Further Notice of Proposed Rulemaking, *Implementation of Non Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC Rcd. 21905, 22035 ¶ 270 (1996).

6 AT&T, to Marlene Dortch, FCC, CC Docket No. 96-150 at 2 (May 9, 2002) (Verizon's first section 272 biennial audit); Comments Of AT&T Corp On SBC's Section 272 Compliance Biennial Audit Report, CC Docket No. 96-150 (Jan. 29, 2003) ("AT&T's Comments to SBC's First Audit Report") at 19-20; Comments Of AT&T Corp On Verizon's Second Section 272 Compliance Biennial Audit Report, EB Docket No. 03-200 (Feb. 10, 2004) ("AT&T's Comments Verizon's Second Audit Report") at 23; Comments Of AT&T Corp On BellSouth's Section 272 Compliance Biennial Audit Report, EB Docket No. 03-197 (March 9, 2004) (" AT&T's Comments to the BellSouth Audit Report") at 3 n.5; and Comments Of AT&T Corp On SBC's Second Section 272 Compliance Biennial Audit Report, EB Docket No. 03-199 (March 26, 2004) ("AT&T's Comments to SBC's Second Audit Report") at 5.

7 *In the Matter of Performance Measurements and Standards for Interstate Special Access Services*, CC Docket No. 01-321. *See ex parte* letter from A. Richard Metzger, Jr. to Magalie Salas, CC Docket No. 01-321 (Jan. 22, 2002) (attaching JCIG Proposal, "ILEC Performance Measurements & Standards in the Ordering, Provisioning, and Maintenance & Repair of Special Access Service"); *ex parte* letter from A. Richard Metzger, Jr. to William Caton, CC Docket No. 01-321 (Feb. 12, 2002) (attaching JCIG

A. Under The Proposed Metrics Critical Data Would Not Be Collected or Reported.

1. The BOC Proposed Metrics Do Not Collect Data Necessary To Perform Statistical Analyses.

The performance metrics currently being used in the section 272 audits require the auditor to disclose, in connection with each of the reported results, the relevant volume data.[8] This data is critical to determining the statistical significance of the results. The Commission has repeatedly rejected Verizon's, SBC's and BellSouth's efforts to redact this volume data from the publicly filed audit reports, holding that it is critical to evaluating the BOCs compliance with section 272, including section 272(e)(1).[9] Indeed, AT&T, in its Comments on each of the audits conducted to date, has used this volume data to demonstrate the statistical significance of the reported data showing BOC discrimination in favor of its affiliate.[10] The

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Proposal Regarding Essential Elements of a Special Access Provisioning Enforcement Plan); *ex parte* letter from Ruth Milkman to Marlene Dortch, CC Docket No. 01-321 (June 18, 2002) (attaching JCIG Proposal Regarding Special Access Provisioning Remedies); *ex parte* letter from Joint Competitive Industry Group to Chairman Michael K. Powell, CC Docket No. 01-321 (February 23, 2004) (responding to various BOC *ex partes*).

8 That is, total number of order requests, trouble reports, or PIC changes, as relevant, for each service and for each group of customers *See* the *General Standard Procedures for Biennial Audits Required Under Section 272 of the Communications Act of 1934, As Amended* ("*General Standard Procedures*") used in: (i) the BellSouth audit, dated November 10, 2003 ("*BellSouth General Standard Procedures*") appended to Report of PricewaterhouseCoopers LLP, (Dec. 23, 2003) ("BellSouth Audit Report") at 43-44; (ii) Verizon's second biennial audit, dated June 1, 2003, ("*Verizon Second General Standard Procedures*") Attachment D to Report of PricewaterhouseCoopers LLP filed (Dec. 12, 2003) ("Verizon's Second Audit Report") at 49-50; and (iii) SBC's second biennial audit, dated December 15, 2003 ("*SBC General Standard Procedures*"), Appendix B to Ernst & Young, LLP (Dec. 17, 2003) ("SBC's Second Audit Report") at 50-51.

9 Memorandum Opinion and Order, *In the Matter of Accounting Safeguards Under the Telecommunications Act of 1996: Section 272(d) Biennial Audit Procedures*, CC Docket No. 96-150, 17 FCC Rcd. 1374 ("*First Verizon Disclosure Order*") ¶¶ 5 and 8 *recon. denied*, Order on Reconsideration, 17 FCC Rcd. 6955 (2002) ("*Verizon Reconsideration Order*") ¶ 3; Memorandum Opinion and Order, *Accounting Safeguards under the Telecommunications Act of 1996: Section 272(d) Biennial Audit Procedures*, 17 FCC Rcd 17012 (2002) ("*SBC Disclosure Order*") ¶ 33; Memorandum Opinion and Order, *In re Verizon Communications, Inc.*, EB Docket No. 03-200, 18 FCC Rcd. 25496 (2003) (*Verizon Second Disclosure Order*) ¶ 3.

10 Comments Of AT&T Corp On Verizon's Section 272 Compliance Biennial Audit Report, CC Docket No. 96-150 (April 8, 2002) ("AT&T's Comments to Verizon's First Audit Report"), Exhibit 1, Bell Decl. ¶¶ 39-46; AT&T's Comments to SBC's First Audit Report, Exhibit 1, Bell Decl. ¶¶ 45-72; AT&T's Comments to Verizon's Second Audit Report, Exhibit 1, Bell Decl. ¶¶ 5-11; AT&T's Comments to the BellSouth Audit Report, Exhibit 1, Bell Decl. ¶¶ 5-13 (March 9, 2004); and AT&T's

BOCs now seek to undermine these prior holding of the Commission by urging the Commission to modify the metrics so that such volume data need not be reported at all.

2. The BOC Proposed Metrics Mask Discrimination by Aggregating The Section 272 Affiliate Data With Other Affiliate Data

Verizon's proposal would "[r]equire aggregate results for Affiliates and IXCs."[11] BellSouth's proposed metrics provide for the aggregation of Section 272 affiliate data with "Other BOC Affiliate" data.[12] The Qwest metrics use a "QCC Aggregate" without disclosing what is included in that aggregate.[13]

As shown in the most recent Verizon audit, reporting the "Section 272 Affiliate" data separately from the "Non-272 Affiliates" data is critical to identifying discriminatory treatment in favor of the former. In that audit, Verizon's Section 272 Affiliate consistently received preferential treatment.[14]

B. Verizon's Proposal Would Allow The BOCs Strategically To Self-Define The Applicable Metric And Then Self-Report Unverifiable Results

Verizon proposes that the Commission "allow [the] *BOCs* to provide appropriate definitions and business rules" for any performance metrics that may be required. [15] However, Verizon's past performance on the section 272 biennial audits demonstrates that it will abuse such a right to self-define the metrics and will adopt definitions and business rules that will insure that the Commission will *not* receive "data that will allow the Commission to monitor compliance with section 272(e)."[16] Specifically, in the first Verizon section 272 biennial audit, Verizon unilaterally substituted its own performance metrics for those mandated by the *General Standard Procedures*.[17] As the Commission found, under the substituted metrics the

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Comments to SBC's Second Audit Report, Exhibit 1, Bell Decl. ¶¶ 13-26 (March 26, 2004).

11 *Verizon May 17, 2004 ex parte* at 5.

12 *BellSouth* e*x parte proposed metrics* at 2, 4-5, 7-8, see "Definition" and "Report Structure." The proposed metrics make no exception for Section 272 audits, despite the assertions in the *ex parte* to the contrary. *BellSouth ex parte power point* at 7.

13 *Qwest* 272 *metrics at* 3-9 (in box marked "Reporting Comparisons").

14 Verizon's Second Audit Report at A-15 to A-22 (Massachusetts, all metrics) and A-35 to A-43 (New York, all metrics).

15 *Verizon May 17, 2004 ex parte* at 2 (Verizon arguing that "[p]erformance reporting is not needed").

16 *Id.* at 4.

17 *Compare*, *General Standard Procedures* April 4, 2001 ("*Verizon First General Standard Procedures*") at 43, *with* Reports of Independent Accountants on Applying Agreed-Upon Procedures, prepared by PricewaterhouseCoopers LLP filed on Feb. 6, 2002 ("Verizon's First Audit Report"), Appendix A Table No. 13 at 33-34 and Appendix F Table No. 25 at 34-35; *see also*, AT&T's Comments to Verizon's First Audit Report at 16-22.

data was not disaggregated "to a level sufficient to permit a service-by-service discrimination analysis."[18]

Verizon also proposes that each BOC self-report the metric results,[19] that is, an auditor would not collect the underlying data, nor would that underlying data be reported. Again, Verizon's past performance in the section 272 audits is instructive. Specifically, in the most recent audit, Verizon, in an effort to explain data showing persistent discrimination in favor of its section 272 affiliate, proffered its own non-audited, self-reported results based on data (not provided or only partially disclosed) for one self-selected month[20] in one or two self-selected states,[21] or for a self-selected (but unidentified) affiliate with a self-selected (but unidentified) non-affiliated carrier.[22] As AT&T's statistician, Dr. Bell demonstrated in his Declaration, there was no way to evaluate whether the results were accurately reported or whether the data was representative of what occurred in other states, or in other months, or for other carriers.[23]

Finally, Verizon proposes that any performance metrics be applied only to special, and not switched, access services, claiming that it is unnecessary for the former because the "[e]xchange access market is highly competitive."[24] The data in the record incontrovertibly shows this not to be the case.[25] To the contrary, because of the BOCs' persistent and continuing monopoly power in the exchange access market, there is a need for performance metrics to be applied, even after the section 272 sunset, to both switched and special access services.

C. The Specific Metrics Proposed By The BOCS Will Weaken or Eliminate Key Metrics That Have, In Past Section 272 Audits, Identified Discriminatory Conduct.

Verizon would eliminate all currently used metrics except "Firm Order Confirmation Timeliness" and would replace the other metrics with a single installation – "On Time Performance" – and a single repair – "Mean Time to Restore" – metric, both to be self-defined by each BOC. Verizon notably declines to proffer its own definition for any of these three

18 *In the Matter of Verizon Telephone Companies, Inc. Apparent Liability for Forfeiture*, File No. EB-03-IH-0245 ¶ 16, n.18 (rel. Sept. 8, 2003).

19 *Verizon May 17, 2004 ex parte* at 7.

20 The single month was July 2002, although the audit covered a 2 year period, and the discrimination shown persisted for all, or the vast majority, of the audited months.

21 The states cited by Verizon were New York and/or Pennsylvania, although eleven states in total were audited and the data showed persistent discrimination in these other states as well (*e.g.*, in Massachusetts).

22 Verizon's Second Audit Report, Appendix A at A:72- A:73.

23 AT&T's Comments to the Verizon's Second Audit Report, Bell Decl. ¶¶ 12-17.

24 *Verizon May 17, 2004 ex parte* at 3.

25 *See, e.g.*, Petition of AT&T Corp., Extension Of Section 272 Obligations Of Verizon In The State Of Massachusetts, WC Docket No. 02-112 (Feb. 19, 2004) at 7; Reply Comments of AT&T Corp., Extension Of Section 272 Obligations Of Southwestern Bell Telephone Co In The States Of Kansas and Oklahoma, WC Docket No. 02-112 (Dec. 29, 2003) at 5-6 and Attachment 7; AT&T's Comments, Further Notice of Proposed Rulemaking proceeding in FCC WC Docket No. 02-112 and CC Docket No. 00-175, FCC 03-111 (filed June 30, 2003) ("Non-Dominance FNPRM") at 8-17; AT&T Reply Comments, Non-Dominance FNPRM (filed July 28, 2003) at 8-11.

metrics. BellSouth would eliminate the "Average Installation Intervals" metric and because BellSouth is proposing "harmonization" of the metrics, its proposal would eliminate the "Time to restore PIC after trouble incident" used in the SBC audits as well. Both BellSouth and Qwest would materially limit the scope of the remaining metrics.

1. The BellSouth and Qwest Articulation of the "Firm Order Confirmation (FOC) Timeliness" Metric Would Mask Evidence Of Material Discrimination

BellSouth and Qwest both propose replacing the current "FOC Timeliness" metric, which reports the data in terms of the time it actually takes the BOC to return the FOC to the originating carrier,[26] with a metric that would only report the "percentage of FOCs returned within the standard interval."[27] The proposed "percentage/standard interval" metric is less able than the "actual time" metric to identify unlawful discrimination for at least two reasons:

First, the proposed "standard interval" time frames are far too long. BellSouth's proposed "standard intervals" are two business days for FGD, DS0 and DS1 service and five business days for DS3 (Non-Optical).[28] Qwest uses a shorter "standard interval" for DS3 service (three business days), but a longer "standard interval" for the other services (three to five business days).[29] In fact (and consistent with the section 272 affiliate data reported in the past audits), a reasonable standard interval would be 24 hours for FGD, DS0 and DS1 and 72 hours for DS3 service.[30]

Second, using "standard intervals" will result in a failure to detect significant discrimination because the section 272 affiliate could still consistently receive FOC confirmations faster within that standard interval than the non-affiliated carrier. For example, the BellSouth section 272 audit showed that, for virtually every audited month in Florida and Georgia for DS3 service, FOC Timeliness was three days for non-affiliated entities compared to only one day (in Georgia) or one-and-a-half days (in Florida) for the section 272 affiliates.[31] Under BellSouth's proposed five day standard interval for DS3 service, this statistically significant discrimination[32] would not have been disclosed or deemed discriminatory. Moreover, the proposed metric would not disclose the extent of variation for those FOCs received outside the "standard interval." That is, the section 272 affiliate could consistently

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26 *BellSouth General Standard Procedures* at 43 ("the average amount of time (in days) from the receipt of a valid service request to the distribution of a Firm Order Confirmation back to the originating carrier"); *see also*, *Verizon Second General Standard Procedures* at 49 ("The amount of elapsed time between the receipt of a valid order request (ASR) from each group of carriers/customers and the distribution of a service order confirmation back to the customer"), the same metric was used in first biennial audit, Verizon's first section 272 biennial audit, Appendix A Table No. 13 at 34 and Appendix F Table No. 25 at 35.

27 *BellSouth ex parte proposed metrics* at 3-4; *Qwest* 272 *metrics* at 4.

28 *BellSouth ex parte proposed metrics* at 3.

29 *Qwest* 272 *metrics* at 4.

30 *See e.g.,* the BellSouth Audit Report, Attachment A at 20-21 (Florida) and 37-38 (Georgia).

31 *See,* AT&T's Comments to the BellSouth Audit Report, Bell Decl. ¶ 11 (March 9, 2004).

32 *Id*.

receive FOC confirmations outside the parity period within one day of the standard interval, whereas the non-affiliated carrier could receive it only two weeks after the standard interval.

The proposed exclusions further dilute the metrics. Most notably, the proposed BellSouth and Qwest metrics exclude larger requests and/or what the BOC deems to be a "Project."[33] Even where separate treatment of such requests may be justified, such "projects" or larger orders should still be provisioned in a non-discriminatory manner. Had such data been excluded in the BellSouth audit, the discrimination suffered by non-affiliated carriers in Florida and Georgia for one of the months – March 2003 – would not have been reported.[34]

The BellSouth proposed metric also excludes "Service Requests cancelled by the originator" and "[u]nsolicited FOCs." As to the former, cancellations should be excluded only if cancelled *prior* to the FOC date. Otherwise, a BOC could strategically wait until after the FOC date to inform the non-affiliated carrier that it will not be provisioned in a timely manner, so that if the carrier then cancels the request because the due date is too far out, the untimely FOC will be disregarded and not included with performance metric. As to the latter – "[u]nsolicited FOCs" as defined ("a supplemental FOC issued by BellSouth to change the due date or for other reasons, although no change to the ASR was requested by the CLEC or IXC Carrier")[35] – vests too much discretion in the BOC to strategically change the due date to avoid a finding of discrimination.[36]

Finally, BellSouth's proposal to address "timing issues" by including only "service requests received and due during the report period"[37] would mean that all service requests submitted in one audited period but not due until another audited period would never be audited.

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33 *BellSouth ex parte proposed metrics* at 2; *see* BellSouth's Guide to Interconnection: Interconnection Services, Issue 12f, December 11, 2003, http://interconnection.bellsouth.com/guides/leo/html/gctic001/c1_2.htm, sections 1.2.3.7 and 1.2.3.20 and Tables B, C and G (25 or more DS-1, or 10 or more DS-3, circuits "New Install" or "Rearrangement Same Location" or 193 or more trunks of FGD service); *Qwest* 272 *metrics* at 4 (excludes "ASRs involving Individual Case Basis (ICB) handling based on quantities of lines as specified in the Service Interval Guide for Access Services and service/request types deemed to be projects" with the term "projects" never defined).

34 BellSouth Audit Report, Appendix A at 45, Attachment A at 20 and 37 and Management's Response at 16.

35 *BellSouth ex parte proposed metric* at 11 ("Glossary").

36 It is unclear whether this proposed exception is a result of what happened with the *BellSouth Audit Report* where BellSouth sought to explain away the discriminatory data by, *inter alia*, asserting that it was due to the fact that subsequent FOC dates were used rather than the initial FOC date to calculate the confirmation. BellSouth Audit Report, Objective VIII, Procedure 4, Appendix A at 45.

37 *BellSouth ex parte proposed metrics* at 2 (in the "Percent FOC Completeness" calculation).

2. BellSouth's and Verizon's Proposed Deletion of the "Average Installation Intervals" Metric Would Undermine The Ability To Detect Discrimination In Provisioning Service.

BellSouth and Verizon both propose deleting this metric, perhaps as a result of the data reported in their section 272 audits. For both BOCs the data demonstrated a consistent preference in favor of their section 272 affiliates. Specifically, the data in the BellSouth audit showed that "Average Installation Intervals" were more than two days shorter for the section 272 affiliate than for non-affiliated entities in virtually every audited month in Georgia, and more than three days shorter in virtually every month in Louisiana.[38] The interval differentials were even longer in the Verizon region.[39]

In response to this evidence, BellSouth argued, without any substantiation whatsoever, that:

> the Average Installation Interval … in BellSouth will only reflect the business decisions of the customer base and cannot be used for parity comparison. Thus the only true provisioning measurement for parity purposes is the Average Installation Appointments Met … which measures whether BellSouth meets the committed due date once it has been determined.[40]

As AT&T has shown in its Comments on the BellSouth and other BOC audits, the BOCs' Interconnection Guides establish the applicable installation intervals, and longer intervals for the non-affiliated carriers do not reflect their business decisions (they would obviously prefer shorter interval) but instead reflect preferential provisioning of the section 272 affiliates.[41] Moreover, the "Percentage of Installation Appointments Met" metric will not measure the extent of discrimination where installation occurs after the committed due date. That is, the section 272 affiliate under those circumstances may nevertheless be provisioned within a day of the committed due date, while non-affiliated carriers may have to wait additional weeks.

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38 AT&T's Comments to the BellSouth Audit Report, Bell Decl., ¶ 9.

39 Verizon's Second Audit Report, Attachment A-18 and A-20, A-32, A-38 and A-40, A-67 and AT&T's Comments to Verizon's Second Audit Report at 7 and Bell Decl. ¶ 6-9 (in New York, in 2001, the non-affiliates' average was 28.4 days compared to only 17.1 days for affiliates and in 2002, the averages were 26.6 days and 15.4 days respectively; for Massachusetts, in 2001, the non-affiliates' average was 33.4 days compared to 14.6 days for affiliates and in 2002, the averages were 24.8 days and 18.7 days respectively); *see also*, Verizon's First Audit Report, Appendix A, Table 14a and AT&T's Comments to the Verizon's First Audit Report at 20-21(for both average installation intervals and Percent Commitments Met there was again consistent bias in favor of the 272 affiliates).

40 BellSouth Audit Report, Objective VIII, Procedure 4, Appendix A at 44- 45.

41 AT&T's Comments to the BellSouth Audit Report at 5-6 and n. 13; AT&T's Comments to Verizon's Second Audit Report at 9 and n. 18 (extended date requests due to Verizon's own requirements or practices, *e.g.,* Verizon's requirement that unaffiliated carriers include additional days on the Access Service Request ("ASR") where nine or more circuits are ordered to the same location).

Verizon's proposal to substitute the yet-to-be self-defined "Installation On Time Performance" metric for both the "Average Installation Interval" and "% Installation Commitments Met" metrics,[42] is subject to the same critique. Verizon has previously argued, without any credible substantiation, that non-affiliated carriers requested longer installation intervals than its affiliate.[43] Verizon's proposed metric would allow it to evade any finding of discrimination by simply adopting a Business Rule, based on this unsubstantiated claim, defining "on time" as longer for non-affiliated than for affiliated carriers.

3. BellSouth's Proposed "New Installation Trouble Report Rate" Metric Is Virtually Meaningless

BellSouth's proposed "New Installation Trouble Report Rate" metric, which measures "the quality of the installation work by capturing the rate of trouble reports on new circuits within 5 calendar days of the installation"[44] is not only unnecessary in light of existing repair metrics but, as currently proposed, is so emasculated as to be of little value in identifying actual discrimination. The proposed "Business Rules" would limit the metric to the *first* customer *direct* trouble report that requires *physical repair work* by BellSouth and is received within five *calendar* days of a completed service order based on the creation date of the trouble ticket, and excludes troubles outside of BellSouth's control.[45]

This metric would not capture discrimination where non-affiliated carriers consistently have to lodge multiple complaints while affiliated carriers receive satisfactory repairs after the first trouble report. Nor would it include trouble reports that BellSouth does not deem to be "direct" or to involve "physical repair work," ambiguous terms that vest substantial discretion in BellSouth. Similarly, the exclusion of "Troubles outside of BellSouth's control" is too subjective. Finally, the use of a five calendar day period with no exclusion for holidays and weekends[46] makes this relevant period too short, particularly over long holiday weekends (such as Thanksgiving weekend). A more appropriate period would be 30 days.[47]

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42 The definition of these two metrics is similar to those used for the BellSouth audit. That is, the "Average Installation Interval" metric is calculated by dividing the total business days for all installation orders or circuits from each group of carriers/customers by the number of installation orders or circuits from carriers/customers; while "% Installation Commitments Met" metric is "calculated by dividing the number of installation orders or circuits from each group of carriers/customers completed by commitment date by the total number of installation orders or circuits" Verizon's first section 272 biennial audit, Appendix A Table No. 13 at 33 and Appendix F Table No. 25 at 34, *Verizon Second General Standard Procedures* at 49.

43 Verizon's Second Audit Report, Appendix A:72 (relying on data not provided, for one self-selected month, July, 2002, in two self-selected states, New York and Pennsylvania). As AT&T demonstrated in its Comments to Verizon's Second Audit Report at 8 and Bell Decl. ¶ 16, the "substantiation" for the claimed justification was inadequate, incomplete, and did not explain the observed differential.

44 *BellSouth* e*x parte proposed metrics* at 5.

45 *Id*.

46 Holidays and weekends are excluded in the other metrics when it is to BellSouth's benefit, *see e.g.,* the proposed "FOC Timeliness Business Rules ("Activity starting on

4. Verizon Would Eliminate All PIC-Related Metrics; BellSouth and Qwest Would Use A Single, Weakened "Average PIC Change Interval" Metric

Verizon would not include any PIC-related metrics, although as AT&T's comments on both Verizon section 272 audits demonstrated, the PIC Interval data consistently showed preferential treatment for Verizon's section 272 affiliate.[48] AT&T has further demonstrated that Verizon and the other BOCs have implemented PIC freezes in a discriminatory fashion.[49] Indeed, even the current metrics are deficient in this regard as SBC, for example, excludes "PIC requests for lines that are PIC protected."[50]

The other BOC proposals would materially modify the "Average PIC Change Interval" metric. The Qwest version would only measure "the percentage of IXC initiated PIC change requests completed within" one of two specified intervals: one day (for "simple" requests) or three days (for "complex" requests).[51] As with the proposed "FOC Timeliness" metric discussed above, the "percentages/intervals" metric masks discrimination within those intervals. Leaving the classification of "simple" and "complex" requests to the discretion of the BOC further allows for the masking of discriminatory conduct.

The BellSouth version would have the interval start, not when placed by the carrier, as currently required,[52] but only when received by the BOC.[53] That is significant since the BOC has greater control over when it deems the request to have been "received." Moreover, because BellSouth seeks to "harmonize" the metrics across BOCs, the BellSouth proposal would also eliminate the "Time to restore PIC after trouble incident" used in the SBC audits.[54] In the second SBC section 272 biennial audit, the data showed that non-affiliates were

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a weekend or holiday will be calculated with an end date of the last previous business day"). *Id* at 2.

47 A period used for other "repair" metrics. *See BellSouth ex parte proposed metric* at 11 ("Glossary") which defines "Repeat Trouble" as "Trouble that reoccurs on the same telephone number/circuit ID within 30 calendar days".

48 AT&T's Comments to Verizon's First Audit Report at 18 n.11, 19-20 and Bell Decl. ¶ 45 (in all five months covered by the audit, it took substantially longer for Verizon to implement competitors' PIC changes than those of Verizon's affiliates; in one month, it took Verizon over three times as long to process competitors' PIC changes); AT&T's Comments to Verizon's Second Audit Report at 21, n. 86 (New York, and Massachusetts consistently in 2001 and the first quarter of 2002).

49 Comments of AT&T Corp., *In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related, Requirements* WC Docket No. 02-112 (Aug. 5, 2002) at 30 (Verizon routinely placing a "PIC freeze" on customers that select its affiliates' long distance services); AT&T Comments on *SBC's First Biennial Audit Report* at 18, n.4.

50 SBC's Second Audit Report, Attachment A-6 at 7.

51 *Qwest ex parte power point at 3-4; Qwest* 272 *metrics* at 3.

52 *BellSouth General Standard Procedures* at 44 ("the average amount of time (expressed in hours) between the date/time the carrier's PIC-related order *is placed* and the date/time the PIC-related service order was completed").

53 *BellSouth ex parte proposed metric*s at 6.

54 *SBC General Standard Procedures* at 51.

consistently less likely to have the PIC restored within one hour after a DS1 trouble incident in Kansas, Oklahoma, or Texas.[55]

5. The BOC Proposals Would Further Dilute The Repair Metrics

Verizon's proposal would replace the current "Total Trouble Reports" and "Average Repair Interval" metrics[56] with the yet-to-be self-defined "Mean Time to Restore" metric.[57] "Mean Time to Restore" would not provide any data on the number of trouble reports filed and, depending on how "time to restore" is defined, may not provide sufficient information on whether repairs took longer for non-affiliated than affiliated carriers. Both Verizon audits demonstrated consistent preference by the BOC in favor of its section 272 affiliate in terms of it having materially fewer trouble reports as well as materially shorter repair intervals.[58]

BellSouth would not eliminate but would modify the current "Total Trouble Reports" and "Average Repair Interval."[59] As modified, both metrics would now include "[o]nly

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[55] AT&T's Comments to SBC's Second Audit Report, Bell Decl. ¶ 26.

[56] *Verizon General Standard Procedures* at 50 (defining the former as "[t]he total number of circuit-specific trouble reports referred to the BOC/ILEC by each group of carriers/customers during the current reporting period" and the latter as "[t]he average interval, expressed in hours to the nearest tenth based on a stopped clock, from the time of the reporting carriers receipt of the trouble report to the time of acceptance by the complaining carrier/customer"). The same metrics were used in the first audit, Verizon's first section 272 biennial audit, Appendix A Table No. 13 at 34 and Appendix F Table No. 25 at 35.

[57] *Verizon May 17, 2004 ex parte* at 7.

[58] AT&T's Comments to Verizon's First Audit Report at 21 (for trouble tickets, the 272 affiliates had few reports, while competitors always had thousands; for the repair interval on trouble tickets, the average interval was always longer for competitors); Verizon's second section 272 biennial audit, Attachment A-21 to A-22, A-41 and A-42; AT&T's Comments to Verizon's Second Audit Report at 8 and Bell Decl. ¶ 10 (non-affiliates received poorer repair service for DS-1 in New York and FG-D service in Massachusetts than the section 272 affiliates). Indeed the Verizon data understates the degree of discrimination because Verizon decided to ignore its own Business Rules to exclude relevant transactions. Verizon's second section 272 biennial audit, Appendix A:77; Bell Decl. ¶ 10 (Verizon excluded "trouble" data that should have been included under the business rules).

[59] "Total Trouble Reports" reported as a percentage was calculated by dividing the number of carrier trouble reports received by the number of carrier circuits in-service during the report period) *BellSouth General Standard Procedures* at 43. The data in the BellSouth audit showed that non-affiliates consistently faced much higher Trouble Report Rates for DS1 in all nine states. BellSouth Audit Report, Objective VIII, Procedure 4, Appendix A at *Id*. at 46, Table 17; AT&T's Comments to the BellSouth Audit Report, Bell Decl. ¶ 8. "Average Repair Interval" "starts at the receipt of the trouble report and ends when the trouble report is reported cleared to the originating carrier; this measurement is calculated by dividing the total number of hours of outage for all carrier reports received during the report period by the number of carrier trouble reports received during the report period". *BellSouth General Standard Procedures* at

customer direct trouble reports" requiring "physical repair work by BellSouth."[60] There is no basis for so limiting the types of repairs that would be included in the metrics. Under BellSouth's proposal, both metrics would further exclude "[t]roubles outside BellSouth's control" and "customer caused troubles" would be excluded from the "Average Repair Interval" metric.[61] These exclusions vest enormous discretion in the BOC as to the classification of outages, allowing the BOC to manipulate the ultimate data collected by the auditor.[62]

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For the foregoing reasons, the BellSouth, Verizon, and Qwest proposed metrics should be rejected and the JCIG metrics should be used for all future section 272 audits and for compliance with section 272(e)(1) after the sunset of section 272.

Sincerely,

Aryeh Friedman

cc: Michelle Carey
Bill Dever
Michael Carowitz
William Cox
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Pamela Megna
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Brad Koerner
Julie Veech

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44 The "Average Repair Intervals" for DS1 service for non-affiliates exceeded those for the 272 affiliate in one of the audited states for all of the audited months. BellSouth Audit Report, Objective VIII, Procedure 4, Appendix A at *Id*. at 47; AT&T's Comments to the BellSouth Audit Report, Bell Decl. ¶ 13.

60 *BellSouth ex parte proposed metric*s at 7-8.

61 In addition, "[c]ustomer hold time or delay maintenance time resulting from verifiable situations of no access to the end user premises, other CLEC/IXC or Bellsouth Aggregate caused delays, such as holding the ticket open for monitoring, is deducted from the total resolution interval." *Id.* at 8.

62 Qwest has a third repair metrics – "All Troubles Cleared Within 4 hours" *Qwest* 272 *metrics* at 7 – a "percentage/standard interval" metric with the same issues identified previously with such metrics.